

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CESAR SANTACRUZ, JAVIER  
VALENCIA, et al.,

Plaintiffs,

v.

FRENCH CONNECTION BAKERY, INC.,  
et al.,

Defendants.

Case No.: C 07-1118 PVT  
Case No.: C 08-0996 PVT

**ORDER DENYING PLAINTIFFS' MOTION TO  
SUBPOENA CERTAIN DOCUMENTS  
CONCERNING A THIRD-PARTY WITNESS  
ANN JOE AFTER DISCOVERY CUT-OFF**

On August 16, 2009, Plaintiffs filed a motion to Subpoena Certain Documents Concerning a Third-party Witness Ann Joe after Discovery Cut-Off. Having reviewed the papers submitted by Plaintiffs, the court finds it appropriate to issue this order without further briefing or oral argument. Based on the moving papers and the file herein,

IT IS HEREBY ORDERED that Plaintiffs' motion is DENIED. Discovery in this case closed on April 30, 2009. Plaintiffs do not explain why they did not seek this information before the discovery cut-off. Plaintiffs have long known that there is a dispute regarding the dates that Plaintiff Cesar Santacruz worked for Defendant.<sup>1</sup> While discovery was still open, Plaintiffs could have easily

<sup>1</sup> See, e.g., Defendants French Connction Bakery Inc. & Amirali Amini Aliabadi's Case Management Conference Statement, filed herein on 2/12/08 (Docket No. 34) at 2:1-3.

1 propounded an interrogatory to obtain contact information for other individuals who worked for  
2 Defendants during the disputed time frame, and then interviewed and/or deposed those individuals to  
3 discover whether they recalled Plaintiff Santacruz working at the bakery during the disputed time  
4 frame. This would have allowed Plaintiff to locate and interview the witness they have now  
5 belatedly located.

6 A showing of good cause is required to justify modification of a scheduling order. *See*  
7 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9<sup>th</sup> Cir. 1992) (“The scheduling order  
8 ‘control[s] the subsequent course of the action’ unless modified by the court. Fed.R.Civ.P. 16(e).  
9 Orders entered before the final pretrial conference may be modified upon a showing of ‘good cause,’  
10 Fed.R.Civ.P. 16(b)...”). Plaintiffs had ample opportunity while discovery was open to seek the  
11 information they now seek. Plaintiffs’ counsel’s lack of diligence does not constitute good cause for  
12 modifying the scheduling order to allow this untimely discovery.

13 Dated: 8/21/09

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15 PATRICIA V. TRUMBULL  
16 United States Magistrate Judge  
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